

§ 800.135

7 CFR Ch. VIII (1–1–02 Edition)

superseded certificate will be considered null and void as of the date of the reinspection certificate.

(2) When official grade or official factors, Class X weighing results, and official criteria are reported on the same certificate, the reinspection certificate shall show a statement indicating that the reinspection results are based on official grade, or official factors, or official criteria and that all other results are those of the original service.

(3) If the superseded certificate is in the custody of the agency or field office, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the agency or field office at the time the reinspection certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the reinspection certificate.

(4) As of the date of issuance of the official certificate, the superseded certificate for the original service will be void and shall not be used to represent the grain.

(5) When certificates are issued under paragraph (a)(1) of this section, the reinspection certificate shall show a statement indicating that the results replaced the original results and that the reinspection certificate is not valid for trading purposes.

[50 FR 45394, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

APPEAL INSPECTION SERVICES

§ 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services, except as provided for in § 800.86(c)(5). When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

(b) *Kind and scope of request.* The kind and scope of an appeal inspection service will be limited to the kind and scope of the original inspection, or reinspection, or, in the case of a Board appeal inspection service, the appeal inspection service. If the request specifies a different kind or scope, the request shall be dismissed. It may, however, be resubmitted as a request for original services. Official criteria is considered separately from official grade or official factors when determining kind and scope. When requested, an appeal inspection for grade, or official factors, and official criteria may be handled separately even though both results are reported on the same certificate. Moreover, an appeal inspection may be requested on the inspection results when both inspection and Class X weighing results are reported on a combination inspection and Class X weight certificate. An appeal inspection for grade shall include a review of all official factors that (1) may determine the grade; or (2) are reported on the original, reinspection, or in the case of a Board appeal inspection, the appeal inspection certificate; and (3) are required to be shown on a certificate of grade.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45395, Oct. 31, 1985, as amended at 55 FR 24048, June 13, 1990]

§ 800.136 How to request appeal inspection services.

(a) *General.* Requests shall be filed with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be filed with the Board of Appeals and Review or the field office that performed the appeal inspection. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel as specified in § 800.46. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed the documentation required by § 800.46 is not available, official personnel may, at

their discretion, withhold service pending the receipt of the required documentation. An appeal inspection certificate will not be issued unless (1) documentation requested under § 800.46 has been submitted or (2) office personnel determine that sufficient information has been made available so as to perform the request. A record that sufficient information has been made available must be included in the record of the official service.

(b) *Filing requirements.* Requests will be considered filed on the date they are received by official personnel. A record shall be maintained for all requests. Requests must be filed (1) before the grain has left the specified service point where the grain was located when the original inspection was performed, (2) no later than the close of business on the second business day following the date of the last inspection, and (3) before the identity of the grain has been lost. If a representative file sample as prescribed in § 800.82 is available, official personnel may waive the requirements pursuant to this paragraph. The requirements of paragraph (b)(1) of this section may be waived only upon written consent of the applicant and all interested persons. The requirements of paragraphs (b)(2) and (b)(3) of this section may be waived at the request of the applicant or other interested persons. The requirement of paragraph (b)(2) of this section may also be waived upon satisfactory showing by an interested person of evidence of fraud or that because of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver shall be included in the record of the appeal inspection service.

(Approved by the Office of Management and Budget under control number 0580-0012)

[50 FR 45395, Oct. 31, 1985, as amended at 54 FR 5924, Feb. 7, 1989]

§ 800.137 Who shall perform appeal inspection services.

(a) *Appeal.* Appeal inspection services shall be performed by the field office responsible for the area in which the original inspection was performed.

(b) *Board appeal.* Board appeal inspection services shall be performed only by the Board of Appeals and Review. The field office that performed the ap-

peal inspection service will act as a liaison between the Board of Appeals and Review and the applicant.

[50 FR 45395, Oct. 31, 1985]

§ 800.138 Conflict of interest.

Official personnel cannot perform or participate in performing or issue an official certificate for an appeal inspection if they participated in the original inspection, reinspection, or, in the case of a Board appeal inspection, the appeal inspection service unless there is only one qualified person available at the time and place of the appeal inspection.

[50 FR 45395, Oct. 31, 1985]

§ 800.139 Certifying appeal inspections.

(a) *General.* Except as provided in paragraphs (b) of this section, official certificate shall be issued according to § 800.160 and the instructions. Except as provided in paragraph (c)(2) of this section, only the results of the appeal inspection service shall be reported.

(b) *Results of material portion sublots.* When results of an appeal inspection performed by a field office or the Board of Appeals and Review on a material portion do not detect a material error, they shall be averaged with the previous inspection results recorded on the official inspection log for the identified sample. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The appeal or Board appeal inspection result shall replace the previous inspection results recorded on the official inspection log for the identified sample if a material error is detected. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel.

(c) *Required statements.* Each appeal certificate shall show the statements required by this section, § 800.161, and applicable instructions.

(1) Each appeal inspection certificate shall clearly show (i) the term "Appeal" or "Board appeal" and (ii) a statement identifying the superseded certificate. The superseded certificate will be considered null and void as of